

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OA) No. 1068 of 2016

Ashok Kumar Nandy

....

Petitioner

Mr. M. Pratap, Advocate

-versus-

State of Odisha & others

....

Opp. Parties

Mr. J.P. Patnaik, Govt. Advocate

**CORAM:
JUSTICE M.S. SAHOO**

ORDER

27.07.2022

Order No.

01.

1. This matter is taken up through hybrid mode.
2. The writ petition has been registered before this Court on 5th January, 2022 after the Original Application was transferred from the learned Odisha Administrative Tribunal, Principal Bench, Bhubaneswar upon its abolition.
3. On perusal of the available order sheets of the learned Tribunal, it is indicated that the learned Tribunal on the first date of hearing admitted the O.A., issued notice returnable within four weeks and passed interim order as quoted herein:-

“So far as prayer for interim order is concerned, the order dated 31.03.2016 under Annexure-1 so far as it relates to the applicant be kept in abeyance till finalization of the O.A., if the applicant has already not relieved.”

4. On the next date of listing on 18.11.2016 in the M.P. No.647 of 2016 that was taken up by the learned Tribunal, the earlier interim order was somewhat modified by passing the following order:-

“xxx xxx Learned counsel for the

applicant submitted that challenging the order of transfer dated 31.3.2016, the applicant has filed the original application and while issuing notice the Tribunal directed that the order dated 31.3.2016 so far as it relates to the applicant be kept in abeyance till finalization of the O.A. The said order was duly served on the respondents, but till date no action has been taken regarding payment of salary from the month of April 2016 onwards.

Learned standing counsel submitted that when the order was passed, the applicant has already been relieved from the place of posting and as he has not performed his duty, he is not entitled for the salary.

Considering the above submission, it is found that the order of transfer was passed on 31.3.2016 and the said transfer order was kept in abeyance by the Tribunal. It is submitted that the respondents have already received the order of the Tribunal. Hence, while the order of transfer in respect the applicant has already been kept in abeyance till finalization of the O.A., the respondents are directed to allow the applicant to continue in his previous place of posting. However, he be paid the salary for the period, if he has performed his duties.”

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5. Thereafter the matter was adjourned by the learned counsel for the applicant on 03.08.2017, 07.11.2017, 30.04.2018 and lastly when the matter was taken up on 22.02.2019 as the lawyers had abstained from work, the matter could not be taken up. After 22.02.2019, the matter was not taken up/pursued nor there is any further pleadings by any of the parties.

6. Having noted the fact that order of transfer has been already implemented and the applicant had joined his new place of posting, the learned Tribunal in its wisdom directed the respondents to allow the applicant to continue in his previous place of posting and he be paid his salary

for the period, if he has performed the duties.

7. The learned counsel for the petitioner is specifically asked as the matter stands today to what remains in the petition to be adjudicated by this Court; in response it is submitted by the learned counsel for the applicant that order of transfer is violative of the Government guidelines and therefore needs to be set aside.

8. Apparently, the opposite party-State have accepted the order dated 18.11.2016 and the matter has been kept as such for the last six years.

9. It is further submitted by the learned counsel for the petitioner that the petitioner seeks regularization of his services while working in the work-charged establishment. When being specifically asked when there is no prayer or application in that regard, learned counsel refers to Prayer No.II i.e. *"Further be pleased to pass any other orders/directions as deem fit and proper in the facts and circumstances of the case"*.

10. Learned Government Advocate referring to the averments made in the O.A. submits that the applicant before the learned Tribunal joined his new place of posting before the filing the O.A.

11. In considered opinion of this Court, as far as regularization of the petitioner's services is concerned, the said issue is a separate cause of action and it shall be open for the petitioner to raise any grievances before the authority or to pursue any litigation as available under law.

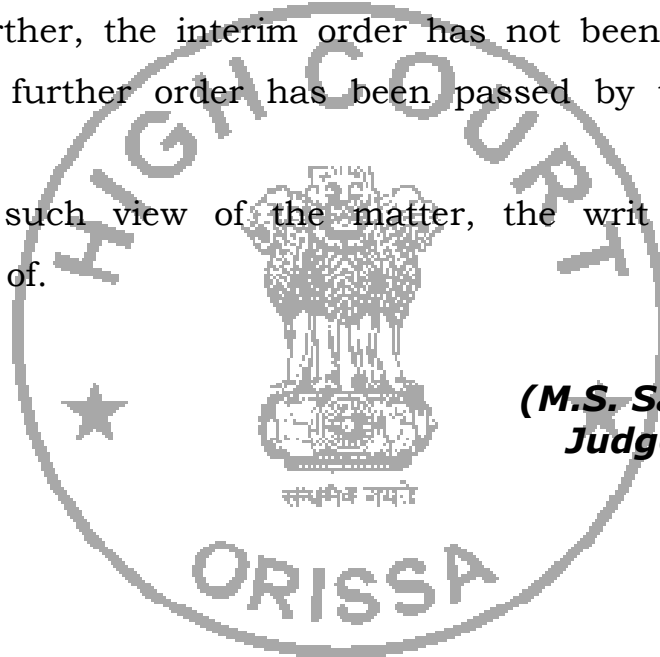
12. As per the Rules of the Administrative Tribunal, applications are to be filed for each/separate cause of action before the learned Tribunal and therefore in the year 2016, if the petitioner was seeking any of the relief like

regularization of the services, the O.A. was to be filed before the learned Tribunal seeking those relief.

13. In considered opinion of this Court, the order of transfer that was kept in abeyance with respect to the applicant before the Tribunal by order dated 10.06.2016 and subsequently the Tribunal having directed the authorities to allow the applicant to continue in his previous place of posting and to pay him salary for the period he worked, nothing survives for determination at present as the interim order was in the nature of final adjudication.

Further, the interim order has not been challenged nor any further order has been passed by the learned Tribunal.

14. In such view of the matter, the writ petition is disposed of.



(M.S. Sahoo)
Judge